

HON'BLE SRI JUSTICE NOUSHAD ALI

Writ Petition No.8865 of 2006

BETWEEN:

R. Ananth Deva Rao

.... PETITIONER

And

1. A.P. Housing Board, rep. by its Managing Director, M.J. Road, Hyderabad, and others.

.... RESPONDENTS

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ORDER:

1. Heard Sri I. Aga Reddy, learned counsel for the petitioner, Sri D. Ranganatha Kumar, Learned Standing Counsel for A.P. Housing Board for respondents 1 and 2.
2. Order of the Executive Engineer, Central Division, A.P. Housing Board, the 2nd respondent herein made in letter No.3957/EE/C/Refund/Poc/05, dated 3.02.2006 cancelling the allotment of a flat made in favour of the petitioner and the consequential letter dated 20.02.2006 forfeiting the deposit, are under challenge in this writ petition.
3. The petitioner was allotted a MIG flat in Singapore Class Township at Pocharam, Hyderabad, under self finance scheme at a cost of Rs.7,70,000/-. A schedule was given for payment of the purchase amount. According to the schedule, 1st instalment (10%) was to be paid before 08.08.2003, 2nd and the remaining 5 instalments (15%, 25%, 25%, 15% and 10% respectively) were to be paid before 22.11.2003, 09.09.2004, 09.09.2004, 19.11.2004 and the final instalment at the time of taking possession i.e., the end of December 2004. One of the conditions of the allotment was that if the instalments were not paid in time as per the schedule, interest at 10% p.a. would be charged on the delayed payment. The petitioner is said to have paid Rs.6,93,000/- towards five instalments on

different dates commencing from 8.08.2003 to 19.11.2004. It appears there was some delay in payment of the said instalments. Hence the allotment was cancelled for non-payment of instalments as per schedule and the cancellation was intimated through letter dated 3.02.2006. By subsequent letter dated 20.02.2006 he was informed that consequent upon the cancellation, 10% deposit was forfeited and he was directed to take back the balance amount.

4. The grievance of the petitioner is that the cancellation of allotment is unsustainable, as the entire payment has been made. According to the learned counsel appearing for the petitioner though there was an obligation on the petitioner to pay the instalments as per the schedule, the allotment cannot be cancelled on the ground of delay and that in such an event the respondents are only entitled to collect 10% interest.

5. The learned counsel appearing for the Board, however, submits that the allotment is liable to be cancelled as soon as there is a default in payment of instalments. In the instant case, sufficient opportunity was given to the petitioner even beyond the stipulated date and only on the failure to avail the final opportunity, the allotment was cancelled.

6. I have considered the aforesaid contentions and perused the material on record.

7. Order dated 27.05.2003 is crucial in the matter. Under the said order, the petitioner was allotted a flat in Singapore Township at Pocharam. He was directed to make payments as per the schedule. The said allotment order contains a crucial condition that for any delay in payment of instalments, the Board would levy interest at 10% p.a. The letter of allotment does not indicate that failure to pay the instalments as per the schedule would result in cancellation of allotment. There does not appear to be any other condition the failure of which would lead to cancellation.

8. This Court taking the aforesaid facts into consideration, issued interim direction in W.P.M.P.No.9535 of 2008 on 15.04.2008 directing the respondents to handover possession of the flat subject to the condition of the petitioner paying interest at 10% p.a. on the delayed payment of instalments. It is stated that the petitioner complied with the direction and the possession has already been handed over to him.

9. I am of the considered view that the order of allotment, dated 25.07.2003 is binding on the Board and the impugned orders dated 3.02.2006 and 20.02.2006 cancelling the allotment and forfeiting the deposit, are unsustainable and are accordingly set aside. It is, however, made clear that the petitioner shall be liable to pay interest at 10% p.a. for the delayed period, if any. The Board is at liberty to calculate the amount and realise the same from the petitioner.

10. The writ petition is allowed as above. No costs.

11. In view of disposal of writ petition, W.P.M.P.Nos.11277 of 2006 and 9535 of 2008 are dismissed as unnecessary.

NOUSHAD ALI, J

16th October, 2012
Js.